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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of Section 309(j) )  
of the Communications Act - )  
Competitive Bidding )

PP Docket No. 93-253

TO: The Commission

COMMENTS OF AMERICAN PERSONAL COMMUNICATIONS

American Personal Communications ("APC")<sup>1/</sup> hereby  
comments on the Notice of Proposed Rule Making released  
October 12, 1993 (the "Notice") in the above captioned docket.

I.

APC supports the Commission's tentative conclusion  
to utilize open, rather than sealed, bidding procedures. An  
open bidding procedure will provide bidders with the greatest  
amount of certainty that they will be able to obtain markets  
that are important to them. Because open bidding replicates  
the open market to a greater degree than sealed bidding, use  
of open bidding procedures should permit auctions to create a  
more rational distribution of licenses.<sup>2/</sup> Reliance on an

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<sup>1/</sup> American PCS, L.P., d/b/a American Personal  
Communications, a partnership in which APC, Inc. is the  
general managing partner and The Washington Post Company is an  
investor/limited partner.

<sup>2/</sup> Although we take no position on whether open bidding  
should be conducted by the traditional method of verbal  
bidding by personal representatives of bidders or by real-time  
electronic bidding, we are concerned that PCS auctions be  
accomplished expeditiously and soundly. If the federal  
government has successfully implemented electronic bidding  
procedures in other contexts, those procedures might be

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aftermarket to rationalize the effect of auctions would be minimized, permitting service to be provided to the public as quickly as possible.

II.

APC has been an advocate of regional, major trading area ("MTA") licensing for PCS. We remain convinced that MTAs should be the fundamental licensing area for PCS. We thus support the use of "combinatorial" bidding to permit basic trading areas ("BTAs") to be aggregated into MTAs but oppose the use of combinatorial bidding to permit MTAs to be aggregated into national licenses.

A.

As APC has commented,<sup>3/</sup> BTAs are simply too small to provide the economies of scale and scope that will bring PCS to all sectors of the American public quickly. Citizens in less densely populated areas would be deprived of the economies that would flow from a service area that incorporates nearby more densely populated areas; service to rural America would be slowed by the use of BTAs. MTA service areas will permit economies to be realized in switching, billing and MIS systems, infrastructure, marketing and service plans, permitting less densely populated areas to be served

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workable for PCS. The license auctions for PCS will, however, dwarf other auctions of government property, and this factor should be taken into account in assessing methodologies to implement competitive bidding.

<sup>3/</sup> See APC Comments, pp. 28-32 (Gen. Docket 90-314, Nov. 9, 1992).

quickly and efficiently. For this reason, APC proposed the use of MTAs, which permit the regional economies necessary for PCS to thrive.<sup>4/</sup>

Permitting combinatorial bids to be submitted for all BTAs within any given MTA would mitigate this problem to some degree. Although it would be preferable for PCS licenses to be defined as MTAs, the "next best" alternative would be to permit bidders seeking MTAs to acquire them by aggregating BTAs in a combinatorial bidding process rather than from an aftermarket (which would delay service and deprive the Federal government of optimal auction revenues). Accordingly, the Commission should permit bidders to submit combined bids for all BTAs within any given MTA.<sup>5/</sup>

B.

APC was pleased that the Commission created two MTA PCS licenses. These licenses are appropriate for "broad-vision" PCS advocates, including APC. The Commission's proposed use of combinatorial bidding to permit nationwide licenses, however, could lead to one or two entities holding

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<sup>4/</sup> APC initially proposed the MTA concept, see APC, Supplement to Petition for Rule Making at 27-35 (May 4, 1992), which is consistent with APC's longstanding emphasis on regional PCS service areas. See Letter from Wayne N. Schelle, Chairman, APC to Hon. Alfred C. Sikes, Chairman, FCC, at 10 (Gen. Docket 90-314, January 15, 1992); En Banc Hearing Statement of J. Barclay Jones, Vice President for Engineering, APC, at 8 (Gen. Docket 90-314, November 21, 1991).

<sup>5/</sup> The winner of such a bid could apply to the Commission to have its service areas consolidated into an MTA, as some cellular entities have done to combine MSAs with surrounding RSAs.

either half of or all available broad-vision PCS licenses. Allowing even one national licensee to absorb such a great number of broad-vision PCS licenses would be a mistake. It could even lead to the exclusion of many of the broad-vision PCS proponents who have led the PCS industry.

APC's PCS comments described in some detail the drawbacks of relying completely upon one or two national licensees for the development of the PCS industry.<sup>6/</sup> These dangers would be more pronounced under the Commission's current licensing plan because national licenses could absorb all available broad-vision PCS licenses. APC and other PCS advocates would be foreclosed from the very PCS marketplace they have helped to create. The American public would be left with one or two monolithic PCS providers, which could dictate the standards, service offerings and technologies that would be available across the United States. These entities would be the national U.S. service providers not by virtue of their quality or vision, but merely because their pockets were deep enough to exclude all others. Such a result would not serve the American public.

As the Commission recognized in its PCS Report & Order, MTA licenses are ideal for wireless communications, including PCS.<sup>7/</sup> The regional Bell operating companies have

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<sup>6/</sup> See APC Comments, pp. 25-28.

<sup>7/</sup> See Amendment of the Commission's Rules to Establish New Personal Communications Services, Second Report & Order, FCC 93-451, p. 33 (Gen. Docket 90-314, Oct. 22, 1993).

recognized as much in recently asking the Department of Justice to support the utilization of MTAs (rather than LATAs) to define wireless markets.<sup>8/</sup> The Commission should not let its correct decision to utilize MTAs be undermined by the use of combinatorial bidding.

### III.

The key procedural decision that will permit PCS markets to emerge rationally and efficiently will be the order in which license auctions are held. APC agrees with the Commission's tentative conclusion to hold auctions in descending order by market size -- that is, the largest market first, followed by the second-largest market, etc.

Within each market, all 30 MHz blocks should be auctioned first, followed by the 20 MHz block and all 10 MHz blocks, before the Commission moves on to the next-largest market. This method will permit bidders to know whether they have obtained a license in that market before auctions for the next market are held. Such a sequence would thus permit the most rational allocation of markets to emerge from the process.

### IV.

The Commission's proposal to effectuate Congress' mandate that "designated entities" -- small businesses, businesses controlled by minorities and women, and rural

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<sup>8/</sup> See Letter from Michael K. Kellogg to Richard L. Rosen, Antitrust Division, Department of Justice (Sept. 24, 1993).

telephone companies -- is generally effective.<sup>9/</sup> The Commission should clarify, however, that "rural telephone companies" are eligible to bid in special "set-aside" spectrum blocks only in the areas in which they have rural telephone franchises. And to make this possible, it should hold that the cellular/PCS ownership bar should not apply to in-region rural telcos.

Both the definition of "rural telephone company" the Commission proposes to adopt<sup>10/</sup> and the definition the Senate adopted<sup>11/</sup> are tied to the specific areas in which a rural telephone company provides service to rural consumers. The rationale for providing a set-aside to rural telcos at all, of course, was to permit these entities to provide PCS to their rural customers. Permitting a "rural telephone company" to bid on the special set-aside block in an area where it has no rural infrastructure -- for the Buffalo, New York BTA, for

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<sup>9/</sup> It would add significant complexities to the policies governing the "set-aside" spectrum blocks (and foreclose opportunities for designated entities) if the Commission authorized pioneer preference licensees in those blocks. For example, restraints on alienation and "unjust enrichment" penalties would be inappropriate for pioneers or for designated entities from whom pioneers might seek to purchase BTA markets in order to assemble an economic and efficient MTA-size PCS system. It also would be unjust to prevent a pioneer placed in that spectrum block from bidding for other BTAs in the same MTA block at auction. APC will comment on these issues more fully in ET Docket 93-266.

<sup>10/</sup> 47 C.F.R. § 63.58 (1992).

<sup>11/</sup> S. 335 defined a rural telephone company as "a common carrier that provides telephone exchange service by wire in a rural area." See S. 335, § 6(b).

example, when its rural infrastructure is limited to Olean, New York or Liberal, Kansas -- would not be rationally related to this purpose.<sup>12/</sup> APC also would support altering the cellular eligibility criteria adopted in the Commission's PCS Report and Order to permit qualifying rural telcos to hold PCS licenses in areas in which they have cellular licenses. The Commission should clarify that rural telcos are eligible to bid in set-aside spectrum blocks only for licensing areas in which they have rural telco facilities.

We also agree with Telocator that the Commission's definition of "rural telephone company" should protect the ability of truly rural telcos to obtain PCS licenses by providing that qualifying rural telcos will be those that serve 150,000 or fewer access lines, in combination with all parent companies and subsidiaries, as of the date of the bid. This criterion will ensure that bidding for the special set-aside spectrum blocks will not be controlled by the larger companies that own some rural telephone franchises -- including GTE and the regional Bell operating companies, a group of the most successful companies in the country. These

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<sup>12/</sup> Permitting this type of untethered "open eligibility" for rural telcos to bid for reserved spectrum (they would be fully eligible to bid for unreserved spectrum wherever they wished to do so) also could undercut the ability of minority and women's groups to acquire PCS licenses. The Commission should note that many rural telcos are owned by the largest telephone companies in the United States. Requiring small businesses to bid against some of the largest telecommunications firms in the country would defeat the purpose of creating a set-aside block for these entities.

companies certainly don't need the artificial protection and government-created leg-up provided by the set-aside policy. There is no reason why they cannot and should not bid for the non-set-aside blocks like all other bidders, including much smaller companies like APC.

We also believe that "unjust enrichment" penalties or anti-trafficking restrictions should not be placed on PCS licenses, including PCS licenses set aside for designated entities in reserved spectrum blocks. Although anti-trafficking restrictions would make sense under a comparative-hearing regime (and, indeed, APC proposed PCS anti-trafficking restrictions as part of its licensing proposal), under an auction regime these restrictions would prevent markets from rationally evolving and deny the public the benefits of economies of scale that could arise from regional clustering of PCS licenses. Artificial restrictions on alienability also would diminish the value of the licenses obtained by designated entities and significantly undercut the flexibility of these entities in configuring PCS systems to conform to the demands of the marketplace.

V.

The Commission's proposal to auction microwave licenses is unwise and based on an incorrect reading of the auction legislation. The Commission should make clear that support spectrum utilized for the internal purposes of a business -- including a PCS licensee using microwave lines for



backhaul rather than landlines -- does not fall within the statutory definition of spectrum that is eligible for auction.

Thus, a microwave link used to connect a PCS base station to a central switch does not permit subscribers to "transmit directly communications signals," as that term is used in the statute. Rather, the PCS spectrum accomplishes that purpose. The microwave path merely relays that signal from one internal location within the PCS licensee to another internal location within the PCS licensee. Neither does the microwave path permit the subscriber to "receive communications signals" within the meaning of the statute. The subscriber receives a signal via PCS spectrum. The microwave path is, again, merely an internal intermediary and, accordingly, it should not be subject to competitive bidding.

Because microwave support spectrum does not satisfy the statutory test for frequencies that are eligible for auction, microwave licenses should continue to be issued under current procedures.<sup>13/</sup> The current system has permitted Commission licensees and businesses across the country to utilize microwave systems effectively and can permit PCS systems to be engineered more quickly than if licensees are

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<sup>13/</sup> In addition, auctioning these microwave licenses would be a time-consuming logistical nightmare. When would competing application be mutually exclusive? How would the Commission treat daisy chains of applications? Would bidders be allowed to acquire microwave paths to extort or injure competitors? How would the auctions be conducted? The revenue would not be worth the administrative burden. Meanwhile, the efficient roll-out of PCS could be delayed or made more expensive, or both.

forced to rely on landline connection of base stations and switching facilities. PCS licensees must bid for PCS licenses; they must pay the costs of relocating incumbent microwave users; and they must finance the most ambitious build-out requirements in the history of the Commission. Adding auction payments for support spectrum to this already imposing burden would not serve the public that would eventually bear these costs.

Respectfully submitted,

AMERICAN PERSONAL COMMUNICATIONS

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